

### **REMARKS**

These remarks are in response to the Office Action dated July 18, 2008. Claims 12, 14-18 and 22-25 are pending in the application.

In the Office Action, claim 25 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 12, 14-18 and 25 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. No. 5,630,829 ("Lauterjung").

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lauterjung in view of U.S. Pat. No. 5,397,355 ("Marin").

Claim 23 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lauterjung in view of Marin and further in view of U.S. Pat. No. 6,221,102 ("Baker").

Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lauterjung in view of U.S. Pat. No. 5,282,824 ("Gianturco").

Reconsideration of the application is respectfully requested in light of the following remarks.

#### **I. REJECTION UNDER 35 U.S.C. § 112**

Claim 25 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that "[t]he specification does not describe curvatures of the two curved portions of the limb to be in the range of about 30 to about 60 degrees."

Applicant disagrees with the Examiner to the extent that it's believed an exact angular range needs to be recited in the text of the specification. Of course, the drawings are part of the application papers. Therefore, if a certain angle or range of angles are depicted in the drawings, they can be claimed without being expressly recited in the text of the specification.

However, solely for the purpose of expediting prosecution, applicant has deleted the portion of claim 25 reciting "wherein the two curved portions comprise curvatures in the range of about 30 to about 60 degrees when in the expanded state."

Accordingly, applicant respectfully requests withdrawal of the rejection to claim 25 under 35 U.S.C. § 112, first paragraph.

## II. REJECTIONS UNDER 35 U.S.C. § 102(e)

### A. Independent Claims 12 and 25

The Examiner has rejected independent claims 12 and 25 under 35 U.S.C. § 102(e) as being anticipated by Lauterjung. The Examiner asserts that Lauterjung clearly anticipates each and every limitation of claims 12 and 25. Applicant respectfully traverses these rejections.

Applicant's independent claim 12 is directed to a stent comprising at least one limb, while independent claim 25 is directed to a limb forming a portion of a stent. Each of independent claims 12 and 22-25 recites "each limb is comprised of two curved portions having opposite directions of curvature, *an intermediate straight, flat mid-portion connecting the two curved portions* and a short, straight segment at each end."

By way of example, applicant's specification teaches that the intermediate straight, flat mid-portion (18) has a length that can be varied to achieve different effects. In particular, "the mid-section 18 may vary in length as may be required for the particular application.... Lengthening the mid-section 18 of the limb element magnifies all of these effects." (see, e.g., applicant's specification at page 18; FIGS. 1-5 and 8-10).

In sharp contrast, Lauterjung does not comprise a limb having *an intermediate straight, flat mid-portion connecting the two curved portions*. This element is flagrantly missing from Lauterjung's description and drawings. Moreover, the spirit of Lauterjung's invention clearly teaches away from having an intermediate straight, flat mid-portion connecting the two curved portions.

Lauterjung's specification teaches "[e]ach elongated member 14 is smoothly curved in opposite axial directions along substantially its entire length between adjacent cusps 16 and 18. That is, each elongated member 14 curves upwardly along a first portion 14a and downwardly along a second portion 14b, with the transition between the upwardly and downwardly curved portions occurring at a point of inflection 20. As explained above, by curving elongated members 14 along substantially their entire length, substantially all of filament 12 contributes to the hoop strength of stent 10...." (see Lauterjung at col. 5, line 48 – col. 6, line 6; emphasis added; see also FIG. 1). Solely for illustrative purposes, Figure 3 of applicant's specification is compared to Figure 1 of Lauterjung below:

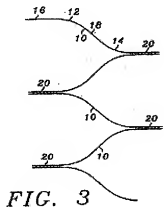
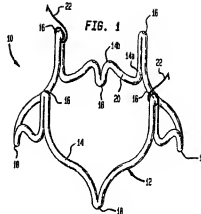


FIG. 3

Applicant's FIG. 3



Lauterjung's FIG. 1

It should be noted that “point of inflection” is defined by Webster’s dictionary as a “point on a curve that separates an arc concave upward from one concave downward and vice versa.”

(See: <http://www.merriam-webster.com/dictionary/inflection+point> – visited October 15, 2008).

Lauterjung’s “point of inflection 20,” which is a single point to separate the arc concave upward 14a from the arc concave downward 14b, is clearly different than applicant’s *intermediate straight, flat mid-portion connecting the two curved portions*.

The term “straight” may be commonly defined as “extending continuously in the same direction without curving.” (American Heritage Dictionary, New College Edition, 1981).

Lauterjung’s “point of inflection 20” is a single point separating the arc concave upward 14a from the arc concave downward 14b, and clearly does not “extend continuously in the same direction without curving.” Therefore, Lauterjung does not teach or suggest an *intermediate straight, flat mid-portion connecting the two curved portions*.

For at least this reason, Lauterjung cannot anticipate applicant’s independent claims 1 and 22-25. Accordingly, applicant respectfully requests the withdrawal of the 35 U.S.C. § 102(e) rejection based on Lauterjung.

Furthermore, applicant submits that it would not have been obvious to modify Lauterjung’s device to obtain the device recited by applicant’s independent claims 12 and 22-25. Specifically, there is absolutely no motivation to modify Lauterjung’s “point of inflection 20” to

form “*an intermediate straight, flat mid-portion connecting the two curved portions*,” as recited in each of applicant’s independent claims.

The fact that Lauterjung teaches away from applicant’s claimed invention is resoundingly clear. In at least 10 passages of the patent, Lauterjung repeatedly stresses elongated members that curve in two opposite directions, “each said member being curved over substantially its entire extent,” i.e., the Lauterjung’s stents merely include a single point of inflection 20 to separate the arc concave upward 14a from the arc concave downward 14b. (see, e.g., Lauterjung Abstract; col. 2, lines 31-35 and 42-43; col. 3, lines 25-26; col. 4, lines 7-9; col. 5, line 48 – col. 6, line 6; col. 6, lines 19-20; col. 9, lines 10-15 and 49-51; claims 1 and 21).

Furthermore, Lauterjung touts the benefits associated with curved elongated members that lack an intermediate straight section. For example, Lauterjung notes: “[i]n accordance with the present invention, the hoop strength of a stent has now been significantly increased by replacing the straight legs with legs which are smoothly curved along substantially their entire length and which therefore contribute to the overall hoop strength of the stent.” (See Lauterjung at col. 2, lines 31-35; emphasis added). Further, “by curving elongated members 14 along substantially their entire length, substantially all of filament 12 contributes to the hoop strength of stent 10...” (see Lauterjung at col. 5, line 48 – col. 6, line 6). This teaching, in conjunction with the “point of inflection 20,” clearly teaches away from an intermediate straight section.

In sharp contrast, applicant’s specification teaches that “the mid-section 18 may vary in length as may be required for the particular application.... Lengthening the mid-section 18 of the limb element magnifies all of these effects.” (see, e.g., applicant’s specification at page 18; FIGS. 1-5 and 8-10).

Therefore, not only does Lauterjung fail to anticipate applicant’s claims 12 and 22-25, Lauterjung also teaches away from “a limb having *an intermediate straight, flat mid-portion connecting the two curved portions*” in at least 10 places in its specification.

### III. REJECTIONS UNDER 35 U.S.C. § 103(a)

#### A. Independent Claims 22-24

The Examiner has rejected independent claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Lauterjung in view of Marin, independent claim 23 under 35 U.S.C. § 103(a)

as being unpatentable over Lauterjung in view of Baker, and independent claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Lauterjung in view of Gianturco. In each case, Lauterjung is the primary reference.

As noted in detail above, Lauterjung does not teach or suggest a “comprised of two curved portions having opposite directions of curvature, an *intermediate straight, flat mid-portion connecting the two curved portions* and a short, straight segment at each end.” Rather, as noted above, Lauterjung clearly teaches away from the intermediate straight, flat mid-portion connecting the two curved portions.

Neither Marin, Baker nor Gianturco make up for Lauterjung’s deficiencies with respect to the teaching or suggestion for a limb “comprised of two curved portions having opposite directions of curvature, *an intermediate straight, flat mid-portion connecting the two curved portions* and a short, straight segment at each end.”

For at least this reason, applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejections to independent claims 22-24.

#### **IV. REJECTIONS TO DEPENDENT CLAIMS 14-18**

Since dependent claims 14-18 depend from independent claim 12, they are allowable for at least the reasons set forth above. Therefore, applicant respectfully requests that the rejections to claims 14-18 be withdrawn.

#### **CONCLUSION**

Each of the rejections in the Office Action dated July 18, 2008 has been addressed and no new matter has been added. Applicants submit that all of pending claims 12, 14-18 and 22-25 are in condition for allowance and notice to this effect is respectfully requested. The Examiner is invited to contact the undersigned attorney if such communication would expedite the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Doug Oguss', written over a horizontal line.

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Dated: October 20, 2008

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